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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION**

In re

HVI CAT CANYON, INC.,

Debtor.

Case No.: 9:19-bk-11573-MB

Chapter 7

**OPPOSITION TO TRUSTEE'S MOTION
FOR THE SALE OF SUBSTANTIALLY
ALL OF THE ESTATE'S ASSETS**

Sale Confirmation Hearing

Date: October 5, 2020

Time: 10:00 a.m.

Place: Courtroom 201
1415 State Street
Santa Barbara, California

California Asphalt Production, Inc. ("CAP"), GTL1, LLC ("GTL1") and GIT, Inc. ("GIT") (collectively "Creditors") creditors of the above-captioned Debtor HVI CAT Canyon, Inc. (the "Debtor") hereby file this opposition (the "Opposition") to the Trustee's Motion for Order Approving Sale of Substantially All of the Estate's Assets (the "Sale Motion", Dkt. No. 1221) and respectfully states as follows:

I.

BACKGROUND

The Debtor initiated the Bankruptcy Case by the filing of a voluntary bankruptcy petition under chapter 11 of the Bankruptcy Code (commencing at 11 U.S.C. § 101, et.

1 seq., hereinafter referred to as the “Bankruptcy Code”) on July 25, 2019 (the “Petition
2 Date”).

3 Prior to the Petition Date, the Debtor and Creditors entered into various
4 agreements for the provision of services, materials, and equipment necessary for the
5 operation of the Debtor’s oil and gas extraction business.

6 GTL1 provided the Debtor with transportation services for both delivery of diluent
7 and transport of oil to the refinery. Additionally, GTL1 rented equipment to the Debtor
8 used in its operations. Provision of these services and equipment continued through
9 various dates with some equipment still in use by the Trustee.

10 GIT provided general and administrative services to HVI, including accounting,
11 administrative, human resources, insurance, IT, compliance and safety, and land
12 management pursuant to a pre-petition administrative services agreement. GIT’s
13 services to the Debtor continued through and including December 2019.

14 CAP had a two-way business relationship with the Debtor by which CAP was both
15 the purchaser of the Debtor’s crude oil and the seller to the Debtor of diluent. Like the
16 services and material supplied by GTL1 and GIT, CAP continued to conduct business
17 with the Debtor post-petition, including after the appointment of the Trustee.

18 The Trustee rejected the agreements with CAP and GTL1 as of November 27,
19 2019 and rejected the agreement with GIT as of December 31, 2019. However, at the
20 Trustee’s request, Creditors continued to provide services, materials and equipment to
21 the Estate, and the Trustee accepted those services, materials, and equipment, both
22 before and after rejection of the agreements.

23 On March 30, 2020, Creditors CAP, GTL1 and GIT each filed a proof of claims
24 (the “Proof of Claims,” Claims Nos. 125, 123 and 126 respectively).

25 On February 24, 2020, CAP, GTL1, and GIT each filed notices of oil and gas liens
26 in the Bankruptcy Case (Dkt. Nos. 821, 822 and 823 respectively) (collectively the “Lien
27 Notices”). The Lien Notices were filed pursuant to the California Code of Civil Procedure
28 (“CCP”) § 1203.50 *et seq.* to perfect the pre-petition lien rights of Creditors for amounts

1 incurred going back six months from the date of the Lien Notices (the “Creditors’ Liens”).
2 Creditors provided services and supplies for the Debtor’s leaseholds at (a) Beldridge in
3 Kern County, California; (b) Santa Maria Valley in Santa Barbara County, California; and
4 (c) Richfield East Dome Unit in Orange County, California (the “Leasehold Interests”).
5 As such, the Creditors’ Liens attached to the Debtor’s Leasehold Interests (the
6 “Leasehold Collateral”).

7 Creditors maintain that under 11 U.S.C. § 362(b)(3) the automatic stay does not
8 apply to the filing of the Lien Notices as acts “to perfect, or to maintain or continue the
9 perfection of, an interest in property to the extent that the trustee’s rights and powers are
10 subject to such perfection under 546(b) of this title.” The Trustee has disputed the
11 application of Section 362(b)(3), and on March 26, 2020 the Trustee filed a Motion to
12 Expunge the Lien Notices [Dkt. No. 875] (the “Expungement Motion”), contending that
13 the Lien Notices violated the automatic stay and were therefore void. Creditors objected
14 to the Expungement Motion and the Court ultimately denied the motion without prejudice
15 and ordered that the dispute over the Creditors’ Liens must be resolved by way of an
16 adversary proceeding.

17 On July 9, 2020, the Trustee filed a complaint against Creditors challenging
18 Creditors’ Liens, as Adversary No. 9:20-ap-01039-MB (the “Lien Adversary”). The only
19 argument put forth by the Trustee in the Lien Adversary is that the Lien Notices violated
20 the automatic stay and the Creditors’ Liens are therefore void.

21 Creditors filed an answer to the Lien Adversary (the “Answer”) and counterclaim
22 (the “Lien Counterclaim”) on August 10, 2020. In the Lien Counterclaim, Creditors assert
23 that the Creditors’ Liens are both valid and senior to other liens filed against the Estate
24 based on the lien preference provisions of CCP § 1203.56. Lien Counterclaim, p. 10, ¶
25 48.¹

26
27 ¹ On September 1, 2020, Creditors filed separate complaints against the Trustee (the “Adversary
28 Proceedings,” 9:20-ap-01049-MB, 9:20-ap-01048-MB, 9:20-ap-01050-MB, respectively),
whereby Creditors are seeking judgment against the Estate for administrative expenses.
Concurrently, GTL1 filed a Motion for Temporary Restraining Order (“TRO”, Dkt. No. 2 in
Adversary Case 9:20-ap-01048-MB.) asking the Court to enjoin the Trustee from further
distributions to administrative expense holders pending allowance of the claims.

1 The Sale Motion seeks to sell the Debtor's assets "free and clear of all liens,
2 claims, rights, interests, and encumbrances whatsoever, other than as set forth in the
3 APA or the REDU APA, in accordance with Bankruptcy Code section 363(b) and (f)."
4 (Sale Motion, Page 30, lines 7-9). Furthermore, the Sale Motion seeks to value the
5 collateral and strip Creditors liens pursuant to Federal Rule of Bankruptcy Procedure
6 3012 in order to make a ruling that the secured claims of Creditors, and others, are "out
7 of the money and entirely unsecured." (Sale Motion, Page 62, lines 26-27). Finally, the
8 Trustee requests that due to the claims of Creditors, and others, being unsecured, that
9 the cash proceeds of the sale be distributed to UBS AG, Stamford Branch and UBS AG,
10 London Branch pursuant to the "senior" liens held by the UBS entities. (Sale Motion,
11 Page 57, lines 25-26).

12 **II.**

13 **CREDITORS' LIENS SHOULD ATTACH TO PROCEEDS PENDING THE**
14 **RESOLUTION OF THE LIEN COUNTERCLAIM**

15 The Sale Motion makes the unsupported and conclusory representation at Page
16 57, in part, as follows:

17 In addition, any liens of GRL, Rival, the State Controller, Collection
18 Service, CAP, GTL1 and GIT are all junior to the senior liens of UBS AG,
19 Stamford Branch and UBS AG, London Branch. As a result, their purported
20 claims are entirely unsecured. See 11 U.S.C. §§ 506(a) and (d). The Court
21 is requested to value the secured interests of [...] CAP, GTL1 and GIT at
22 zero pursuant to Fed. R. Bankr. P. 3012. Therefore, since their claims are
23 not allowed secured claims and are entirely unsecured as of the Petition
24 Date, the Trustee can sell the Purchased Assets and their liens need not
25 attach to sale proceeds.

26 There is no substantive or factual discussion of the priority of liens, and no
27 evidence is submitted by way of a title report or testimony regarding the lien priorities of
28 any of the alleged secured creditors. Furthermore, the validity and priority of the
Creditors' Liens are currently the subject of the Lien Adversary and Lien Counterclaim.
Creditors have asserted that the Creditors' Liens are senior to all other liens asserted
against the subject Leasehold Collateral. Creditors acknowledge that the Creditors'
Liens are subject to a bona fide dispute and the sale may occur free and clear of such

1 Liens. However, the unsupported representation that the Creditors' Liens are junior to
2 the liens of UBS is not conceded – and is in fact a pending question in the Lien
3 Counterclaim.

4 The Lien Counterclaim in the Second Claim for Relief, states in relevant part at
5 Page 10, Paragraph 48, as follows:

6 An actual and substantial controversy has arisen and now exists between
7 the Counterclaimants, on the one hand, and the Trustee, on the other
8 hand, concerning whether the Counterclaimants hold valid Oil and Gas
9 Liens against the Estate. Counterclaimants contend that they hold valid
10 and senior liens against the Estate pursuant to California Civil Procedure
11 Code § 1203.58 for unpaid services and materials Counterclaimants
12 provided to the Estate post-petition. (emphasis added).

13 Importantly, oil and gas liens created under the California Oil and Gas Liens
14 statute enjoy heightened preference over certain other liens pursuant to § 1203.56,
15 which states:

16 The lien provided for in this chapter arises on the date of the furnishing of
17 the first item of material or services or the date of performance of the first
18 labor for which a lien is claimed under the provisions of this chapter. Upon
19 compliance with the provisions of Section 1203.058, such lien shall be
20 preferred to all other titles, charges, liens or encumbrances which may
21 attach to or upon any of the property upon which a lien is given by this
22 chapter subsequent to the date the lien herein provided for arises.
(emphasis added)

23 Given the asserted seniority over any liens that attached to the Leasehold
24 Collateral after the date the underlying Creditors' Liens first arose. Given the pending
25 dispute as to when the Creditors' Liens first arose – the priority of the Creditors' Liens
26 relative to the liens of the UBS entities remains an open question that the Court has yet
27 to decide.

28 Creditors agree with the proposition that a sale of estate assets free and clear of
liens that are subject to a bona fide dispute is authorized, including in the context of the
proposed sale. However, given the fact that the priority of the Creditors' Liens is subject
to such bona fide dispute, the disputed interest must attach to the proceeds of the sale
pending a resolution of the Lien Adversary and Lien Counterclaim. "The purpose of
§ 363(f)(4) is to permit property of the estate to be sold free and clear of interests that
are disputed by the representative of the estate so that liquidation of the estate's assets

1 need not be delayed while such disputes are being litigated. Typically, the proceeds of
2 sale are held subject to the disputed interest and then distributed as dictated by the
3 resolution of the dispute; such procedure preserves all parties' rights by simply
4 transferring interests from property to dollars that represent its value".(emphasis added)
5 Moldo v. Clark (In re Clark), 266 B.R. 163, 171-72 (B.A.P. 9th Cir. 2001); *See, generally*,
6 3 Lawrence P. King, *Collier on Bankruptcy* P 363.06 (15th. ed rev. 1998).

7 Here, the Trustee may not strip the Creditors' Liens from the Leasehold Collateral
8 unless and until the Court has resolved the Lien Adversary and Lien Counterclaim. Thus,
9 the relief sought in the Sale Motion under Section 363(f)(4) goes beyond what is
10 authorized thereunder. To the extent that a sale is allowed, the cash proceeds must be
11 held by the Estate subject to the Creditors' Liens until such time as the priority of such
12 liens has been adjudged by this Court.

13 **III.**

14 **CONCLUSION**

15 As provided above, and the reasons set forth in the Creditors' Adversary
16 Proceedings, Answer and TRO, Creditors respectfully request that the Court condition a
17 sale of the estate assets on the enforcement of the Creditors' interests and deny the
18 Trustee's Sale Motion to the extent that it seeks a sale of the estate assets free and clear
19 of those interests.

20 DATED: September 21, 2020

MARGULIES FAITH LLP

21 By: /s/Jeremy W. Faith.

22 Jeremy W. Faith

23 Attorneys for CAP, GTL1 & GIT

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
16030 Ventura Blvd., Suite 470, Encino, CA 91436

A true and correct copy of the foregoing document entitled **OPPOSITION TO TRUSTEE'S MOTION FOR THE SALE OF SUBSTANTIALLY ALL OF THE ESTATE'S ASSETS** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On September 21, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On September 21, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

JUDGE: Pursuant to Amended General Order 20-02, judge's copies are not required for any document less than 25 pages.

DEBTOR: HVI Cat Canyon, c/o Capital Corporate Services, Inc., 36 S. 18th Ave., Suite D, Brighton, CO 80601

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 21, 2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

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☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 21, 2020
Date

Helen Cardoza
Printed Name

/s/ Helen Cardoza
Signature

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